

CHAMBERS PROCEDURES AND PRACTICES

CHIEF JUDGE GREGORY W. CARMAN

Sample RULE 16 Letter used in TRADE actions
by Chief Judge Carman

(Date)

Re: (Title of Action)
(Court Number)

Name/address of attorney for plaintiff

Name/address of attorney for defendant

Name/address of attorney for
any other parties to action

Dear Counsel:

Please be advised that, pursuant to the Rules of this Court, it is contemplated that a scheduling order will be entered in regard to the above-captioned case. It would be appreciated if you would confer with counsel for the other parties and arrive at a proposed schedule that will accommodate the spirit of Rules 16 and 56.2. In accordance with U.S. CIT R. 56.2, plaintiff's attorney is directed to file with the Clerk of this Court and serve on all parties, within 30 days from the date of filing of the administrative record, the following:

(1) a proposed scheduling order that is in substantial compliance with U.S. CIT R. 56.2 and the enclosed proposed scheduling order form, and agreed to by all of the parties; or

(2) in the event an agreement cannot be reached by the respective parties concerning proposed dates in the scheduling order, a proposed scheduling order, by each party, that is in substantial compliance with U.S. CIT R. 56.2 and the enclosed proposed scheduling order form.

If counsel are not able to agree upon a proposed schedule, plaintiff's attorney is directed to call one of my law clerks, Mr. _____, or Ms. _____ in my chambers to arrange for a telephone conference no later than 14 days from the date of this letter. If you have any questions concerning the scheduling order, please contact one of my law clerks.

Rule 56.2 briefs and response briefs shall each be limited to fifty (50) pages, and reply briefs shall be limited to twenty-five (25) pages. In addition, please include one hard copy of any cited record document that is filed in microfilm/microfiche form in a separate appendix to the relevant brief filed with the Clerk of this Court.

Further, to ensure that the Court properly notes that there is a request for oral argument, any motion for oral argument shall be filed separately.

Your cooperation is most appreciated.

Cordially yours,

Gregory W. Carman
Chief Judge

Enclosure

Sample RULE 16 Letter used in CUSTOMS actions
by Chief Judge Carman

(Date)

Re: (Title of Action)
(Court Number)

Name/address of attorney for plaintiff

Name/address of attorney for defendant

Name/address of attorney for
any other parties to action

Dear Counsel:

Please be advised that, pursuant to Rule 16 of the Rules of this Court, it is contemplated that a Scheduling Order will be entered in regard to the above-captioned case. It would be appreciated if you would confer with counsel for the other parties and arrive at a proposed schedule that will accommodate the spirit of Rule 16. Plaintiff's attorney is directed to file with the **Clerk of this Court** and serve on all parties, within 14 days from the date of this letter, the following:

- (1) a proposed scheduling order that is in substantial compliance with the enclosed proposed scheduling order form and agreed to by all of the parties; or,
- (2) in the event an agreement cannot be reached by the respective parties concerning proposed dates in the scheduling order, a proposed scheduling order by each party, that is in substantial compliance with the enclosed proposed scheduling order form.

Re: (Title of Action)
(Court Number)

-2-

(Date)

You are further directed to advise any and all parties, as they appear in this action, of the need to comply with Rule 16 and to cooperate in effecting appropriate scheduling.

Enclosed please find a copy of the pretrial order form that is being utilized by my chambers. This form will be discussed and signed at the pretrial conference.

In the event you would like the trial to be held at a place other than the United States Court of International Trade in New York City, you are instructed to file a request for trial at the time of filing the proposed scheduling order. The request must be in substantial compliance with Form 6 in the Appendix of Forms of the Rules of this Court.

If counsel are not able to agree upon a proposed schedule, plaintiff's attorney is directed to call one of my law clerks, Mr. _____, or Ms. _____.

_____, in my chambers to arrange for a telephone conference no later than 14 days from the date of this letter. If you have any questions concerning the scheduling order or the pretrial order forms, please contact one of my law clerks.

Your cooperation is most appreciated.

Cordially yours,

Gregory W. Carman
Chief Judge

Enc.

Plaintiff

v.

Defendant

:

:

:

:

:

Court No.

SCHEDULING ORDER

1. Discovery to be concluded no later than .
2. Dispositive motions, if any, to be submitted .
3. If no dispositive motions are filed, or if dispositive motions do not dispose of this case:
 - a. Proposed pretrial order to be submitted .
 - b. Final pretrial conference set for
at a.m./p.m. in Judge Carman's chambers.
 - c. Trial to commence
at 10:00 a.m. in Courtroom 4 of the United States Court
of International Trade.

New York, N.Y.

UNITED STATES COURT OF INTERNATIONAL TRADE

v.

:
:
: Court No.
: SCHEDULING ORDER
:
:

All counsel having consulted and consented in the matter, the following pretrial schedule for this action is adopted:

- (1) The administrative record to be filed no later than .
- (2) Any motions addressed to the pleadings, the record or other matters to be submitted no later than .
- (3) Plaintiff to file its Rule 56.2 brief on .
- (4) Defendant to file its response on .
- (5) Plaintiff to file its reply on .

Pursuant to Rules 1 and 16 of the Rules of the United States Court of International Trade, the foregoing schedule is hereby made an order of the Court.

SO ORDERED.

The Clerk of the Court is directed to forward copies of this scheduling order to counsel for all parties.

Gregory W. Carman, JUDGE

Dated:

New York, New York

UNITED STATES COURT OF INTERNATIONAL TRADE

v.

:
:
: Court No.
: SCHEDULING ORDER
:
:

All counsel having consulted and consented in the matter, the following pretrial schedule for this action is adopted:

- (1) The administrative record to be filed no later than .
- (2) Any motions addressed to the pleadings, the record or other matters to be submitted no later than .
- (3) Plaintiff to file its Rule 56.1 brief on .
- (4) Defendant to file its response on .
- (5) Plaintiff to file its reply on .

Pursuant to Rules 1 and 16 of the Rules of the United States Court of International Trade, the foregoing schedule is hereby made an order of the Court.

SO ORDERED.

The Clerk of the Court is directed to forward copies of this scheduling order to counsel for all parties.

Gregory W. Carman, JUDGE

Dated:

New York, New York

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff

v.

Defendant

:

:

:

Court No.

:

PRETRIAL ORDER

:

At a pretrial conference held before Hon. Gregory W. Carman, and attended by counsel, the following matters were discussed and agreed to, and are hereby ordered:

1. **General.** The parties recognize that this pretrial order controls the subsequent course of the action unless the order is modified by consent of the parties and the Court, or by order of the Court to prevent manifest injustice. The attached schedules are part of this order. Each schedule shall be on a separate sheet.

2. **Parties and Counsel.** Schedule A sets forth the names of all parties, the names, addresses and telephone numbers of their respective attorneys, and the names of trial counsel for each party.

3. **Jurisdiction.** Schedule B-1 sets forth the statutes, legal doctrines, and facts upon which plaintiff claims jurisdiction is based. Schedule B-2 indicates which, if any, of these are contested.

4. **Uncontested Facts.** All uncontested facts are set forth in Schedule C.

5. **Liability Claims and Defenses.** The parties' claims and defenses on liability are separately listed in Schedules D-1, D-2, etc.

6. **Damages and other Relief.** Claims with respect to damages and other relief sought by each party are detailed in Schedules E-1, E-2, etc.

7. **Waiver on Claims.** The parties waive all claims with respect to liability, damages, and other relief and all affirmative defenses which are not set forth in Schedules D and E.

8. **Issues.** Schedule F sets forth and separately numbers the issues of the case. If the parties cannot agree as to the issues, then their separate statements of the issues shall be set forth as Schedules F-1, F-2, etc.

9. **Witnesses.** Schedules G-1, G-2, etc., list for the respective parties each witness whose testimony is not unlikely at the trial, setting forth for each witness (a) name, (b) address, and (c) a summary of expected testimony, and for expert witnesses (d) the area of expertise.

10. **Expert Witnesses.**

A. For all expert witnesses:

1. The expert's proposed direct testimony, including his qualifications, shall be written out **in full**, in either narrative or question-and-answer form, and a copy filed and served on each adversary at least two weeks prior to the pretrial conference date.
2. Objections to any part of an expert's direct testimony shall be in writing and served and filed no later than five days before the pretrial conference date.
3. Experts will be subject to cross-examination at trial.
4. Only under extraordinary circumstances and in the interest of justice will the Court permit expert testimony which does not comply with the foregoing requirements.

B. All expert testimony based on scientific, technical or other specialized knowledge must satisfy the test set out in *Daubert v. Merrell Dow*

Pharmaceuticals, Inc., 113 S. Ct. 2786 (1993). See *Kumho Tire Company, Ltd. v. Carmichael*, 119 S.Ct. 1167(1999). The five relevant but non-dispositive factors set forth in *Daubert* are as follows: (1) whether the theory or technique can be or has been tested; (2) whether the theory or technique has been subject to peer review and publication; (3) the known or potential rate of error; (4) the existence and maintenance of standards and controls; and (5) the degree to which the theory or technique has been generally accepted within the scientific community.

11. Deposition Testimony.

- A. Any party proposing to use deposition testimony as evidence shall, at least two weeks prior to the trial date, notify all adversaries of the testimony proposed to be read. All irrelevant and redundant matter and all unnecessary colloquy of counsel shall be eliminated. Objections to any proposed deposition testimony shall be made in writing no later than one week prior to trial. The Court will rule on all such objections prior to commencement of the trial.
- B. Suggested Procedure.
 - 1. Proposing counsel marks a copy of the deposition indicating either portions to be read or portions not to be read.
 - 2. Adversary counsel marks in the deposition all objections, stating the grounds for each.
 - 3. The marked deposition will be delivered to the Court which will read it and indicate rulings on the same marked copy.
- C. The foregoing requirements do not apply to use of depositions for impeachment purposes.

12. Exhibits. Schedules H-1, H-2, etc., list for the respective parties the exhibits to be offered in evidence by that party. Each list shall identify and describe each exhibit. Plaintiff's exhibits shall be identified by numbers, defendant's by letters.

13. **Objections to Exhibits.** Schedules I-1, I-2, etc., list for the respective parties each adversary's exhibits whose authenticity and admissibility are not admitted. The specific ground for objection to each contested exhibit listed shall be stated.

14. The parties recognize that they will not be allowed to use at trial any exhibits or witnesses not identified in this pretrial order except upon prompt notice to all parties and to the Court, and upon a showing of excellent cause.

15. All discovery is complete.

16. The trial will take approximately days.

17. Where there is to be a jury trial, respective counsel will submit proposed jury instructions at the time of the submission of the pretrial order.

GREGORY W. CARMAN, JUDGE

DATED:

New York, N.Y.

APPROVED AND CONSENTED TO:

Attorney for

Attorney for

Attorney for